

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK BURKE,

Plaintiff,

v.

PATRICK COVELLO, et al.,

Defendants.

No. 2:23-cv-0768 KJN P

ORDER & FINDINGS &
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. For the reasons stated herein, the undersigned recommends dismissal of this action.

On June 29, 2023, the undersigned dismissed plaintiff's complaint with leave to amend. (ECF No. 8.) Plaintiff appealed the order dismissing his complaint with leave to amend to the Ninth Circuit Court of Appeals. (ECF No. 12.) On August 24, 2023, the Ninth Circuit dismissed plaintiff's appeal for lack of jurisdiction. (ECF No. 16.) On September 15, 2023, the Ninth Circuit issued the mandate. (ECF No. 18.)

By order filed September 27, 2023, plaintiff was granted thirty days to file an amended complaint. (ECF No. 19.) The September 27, 2023 order advised plaintiff that failure to file an amended complaint within that time would result in the recommendation of dismissal of this action. (Id.) Thirty days from that date passed and plaintiff did not file an amended complaint or


1 otherwise respond to the court's order.

2 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall appoint a
3 district judge to this action; and

4 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See
5 Local Rule 110; Fed. R. Civ. P. 41(b).

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
8 after being served with these findings and recommendations, plaintiff may file written objections
9 with the court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
11 failure to file objections within the specified time may waive the right to appeal the District
12 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: November 2, 2023

14 
15 KENDALL J. NEWMAN
16 UNITED STATES MAGISTRATE JUDGE
17
18
19

20 Burke768.fta
21
22
23
24
25
26
27
28